

REMARKS

Reconsideration of this application in light of the amendments and remarks is respectfully requested.

I. Rejection Under 35 U.S.C. § 112

MPEP § 2163.04 states: “The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims.” While Applicants do not believe this burden has been met, the recitation of sulfur in claim 13 is supported at least by p. 6, line 22 in the specification. Accordingly, the rejection of claim 13 for lacking written description should be withdrawn.

II. Rejections Under 35 U.S.C. § 102

The Examiner has cited a foreign language reference, Bruck et al. (DE 3501697). The MPEP at § 706.02(II) states: “If the [cited] document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection.” Since the Examiner is relying on portions of the reference that are in German, and not just the English abstract, then a translation must be provided to give Applicants a fair opportunity to rebut the rejection. Accordingly, a prima facie case of unpatentability has not been made.

Applicants have made an effort to review the foreign language reference and even obtained a machine translation of it. It remains unclear whether the reference is actually teaching the elements of claims. In particular, the Examiner points to the presence of Vulkanol 85 in Example 1 as meeting the requirement of the claims. However, Vulkanol 85 is listed as a

footnote to the formula table, and the machine translation from the EPO's espacenet website indicates that the footnote states "used became Vulkanol 85." Thus, it is unclear whether Vulkanol 85 itself was used or some precursor, for what it was used, when it was used, in what amount, and if it was used why it was listed in a footnote and not in the formula itself.

Bruck does not disclose any amount of Vulkanol 85. Therefore, claims 4 and 5, which specify an amount of surfactant containing a thio functionality and thioether surfactant cannot be anticipated by Bruck.

In addition, to further distinguish the claims, Applicants have amended claim 1 to include "one or more antidegradants." The Bruck reference does not appear to disclose any antidegradants.

III. Rejections Under § 103

For the same reasons expressed above, the Bruck reference cannot be used in the obviousness rejection unless a translation of the same is provided.

In addition, the Bruck reference is not properly combinable with Bataille (U.S. 2001/0051677). The Bruck reference appears to make only a footnote reference to the use of something that may be Vulkanol 85. There is no explanation of what it was used for, when it was used, in what amount, and why it was listed in a footnote and not in the formula itself. From the information on record, no benefit whatsoever is attributed to the use of Vulkanol 85, and no one of skill in the art would be motivated to combine this element of Bruck with the Bataille reference for any reason.

The Examiner alleges that the use of the ether-thioether teachings of Bruck would provide improved ozone resistance when combined with Bataille; however, the ozone resistance properties of Bruck appear to be attributed to the EPDM/NPR polymer component, (see 2nd paragraph of machine translation) not to the use of Vulkanol 85.

Furthermore, according to the machine translation, Bruck is directed to compositions for “hose covers, conveyor covers, or power transmission belts.” Such articles are not in the same field of endeavor as Bataille, which is directed to tires. Tires are significantly different from the covers and belts disclosed in Bruck. Visual appearance is not as important in covers and belts as it is in tires, and covers and belts are not subjected to same types of integrity disrupting forces as tires are. This is another reason that leads away from the combination of Bruck and Bataille.

In addition, regarding the amendment to claim 1, one of skill in the art would not be motivated to use any antidegradants with the compositions disclosed in Bruck, since Bruck discloses that its NBR/EPDM mixtures are known to have good “ozonosphere resistance.”

IV. New Claims 14-20

New claims 14-20 are supported by the specification. As mentioned above, if the Examiner disagrees, the MPEP puts the burden on the Examiner to explain why the claims are not supported by a preponderance of the evidence.

Claims 14-20 require various elements that are not present in one or both cited references.

V. Conclusion

For the foregoing reasons, the claims are believed to be in condition for allowance and allowance is respectfully requested.

Respectfully submitted,

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